IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 329 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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POPATLAL B GODANI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR KB PUJARA for Appellant(s) : 1,
MR AJ DESAI, LD.APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 15/12/2006

ORAL JUDGMENT

1. Heard Shri K.B. Pujara, learned counsel appearing for the appellant-orig.accused-convict and Shri A.J. Desai, learned Additional Public Prosecutor, appearing on behalf of the respondent-State. The appellant-

orig.accused is present in the Court today and on instructions received from the appellant, Shri Pujara states that at present the appellant is doing mainly the work of distributing milk pouches in Bapunagar Area and nearby vicinity, and he has left the business of edible oil and oil seeds for the last about 20 years; especially on cancellation of his licence by the Civil Supply Department and he has diverted himself to some other activity as aforesaid. It is submitted that when the aforesaid offence was committed by the appellant, he was a young man of 23 years.

2. Shri Pujara, learned counsel appearing for the appellant-convict, has taken this Court through the nature of evidence led by prosecution and the basic case placed before the trial Court against the appellant. The Court would like to state the prosecution case in brief as under :

2.1 As per the say of the prosecution, the business premises of the appellant was inspected by the team of Civil Supply Department and as per the Register, which was required to be maintained as a Dealer of edible oil, the stock on hand with the appellant was of one tin, which was actually lying in his shop. However, in the adjacent shop, the said team had found 16 other tins and they were not labelled. Even the appellant was not able explain about the said stock and holding of the said stock by him. It is alleged by the prosecution that the adjacent shop was locked. However, it was opened by the appellant at the instance of the Members of the team and the explanation given by the appellant was not found acceptable that the stock does not belong to him and the shop, from where the stock of 16 tins of edible oil were found and seized, is also not possessed or occupied by him. On account of violation of Gujarat Essential Articles (Licencing, Control and Stock Declaration) Order, 1981

(hereinafter referred to as 'the Order, 1981'), the appellant came to be prosecuted under Sections 3, 7 and 10 of the Essential Commodities Act, 1955 (hereinafter referred to as 'the Act').

3. After going through the nature of oral as well as documentary evidence and some of the documents signed by the appellant, Shri Pujara has fairly submitted that he may not press the present appeal qua the conviction recorded but at least he should be heard on the point of quantum of punishment. Of course, the punishment imposed by the learned trial Judge is rigorous imprisonment for three months, which is minimum prescribed under the law. However, after about 21 years since the date of inspection, the accused may not be sent to jail and the Court may think of giving him benefit under Section 4 of the Probation of Offenders Act, 1958, and also under Section 360 of the Code of Criminal Procedure, 1973. In support of this submission, Shri Pujara has

placed reliance on two decisions of this Court; (i) in the case of State of Gujarat v. Ganpatbhai Premjibhai Joshi, reported in 1998(1) GLH 787, wherein this Court has given benefit to the accused-convict under the scheme of Probation of Offenders Act, and a question as to whether the convict-accused should be sent to jail after about 10 years had cropped up. This Court had referred to one decision of the Apex Court in the cited decision and Shri Pujara has heavily placed reliance on the said decision of the Apex Court in the case of ***Ghanshyam Das v. Municipal Corporation of Delhi, reported in AIR 1975 SC 845***. The case before the Apex Court was under the Prevention of Food Adulteration Act and the submission was made that the accused-convict may be given benefit of Probation of Offenders Act on the facts and other circumstances and the Apex Court has granted benefit to the convict-accused. This Court would like to refer to the relevant part of the said decision for the sake of brevity

and convenience, which is as under :

> “After hearing the learned counsel for the parties, we are of the view that as the matter pertains to the year 1965 and as the appellant since then has had to face protracted criminal proceedings, it would not seem proper to send the appellant to jail. In our opinion, it is a fit case in which the order of the learned Additional Sessions Judge by which he directed that the appellant be bound down under S.4 of the Probation of Offenders Act be restored.”

4. In the present case, the shop of the appellant-convict was inspected by the Civil Supply Department on 10th July, 1985. The judgment and order of conviction and sentence recorded by the learned Special Judge, even if is considered, is dated 16th March, 1992. The appellant faced trial for about seven years.

Technically speaking, the stock recovered from the adjacent shop to the shop of the appellant was much less than 5 quintals prescribed for the edible oil and oil seeds. So even as per the Civil Supply Department and the policy, the case of the appellant would not fall under the category of grave case of violation of the Order, 1981 issued under Section 3 of the Act. The Court is not concerned with the labels of various brands recovered from the said shop because on that count the appellant was neither prosecuted nor held guilty. When the appellant has settled in his life within the period of these 21 years, the Court can positively exercise powers vested with the Court under Section 4 of the Probation of Offenders Act. When the conviction is not challenged and the matter is argued on the point of quantum of punishment and request to grant benefit under the scheme of Probation of Offenders Act, is one of the alternative arguments while making submissions on the point of quantum of punishment, this Court is

inclined to grant the request as prayed for which is acceptable and therefore, this alternative argument is hereby accepted.

5. In view of above observations and discussion, by adopting the reasons assigned by the learned trial Judge, the present appeal is hereby partly allowed, and as the judgment and order of conviction is not challenged by the appellant-convict, the same is hereby upheld. However, the substantive sentence imposed by the learned trial Judge shall remain inoperative for two years from today and the appellant has been granted benefit under Section 4 of the Probation of Offenders Act, 1958, on a condition to maintain good conduct and responsible behaviour as good citizen on usual terms and the appellant herein shall also execute a bond of Rs.5000/- (Rupees Five Thousand only) for a period of two years in the prescribed form as contemplated under the Rules framed under the Probation of Offenders Act. However, while accepting the said bond,

the learned trial Judge shall insert one more condition in the bond that if the appellant herein approaches any Government department for any licence or parwana for any type of trade or business which is required under the scheme of Act or any other order, circular or direction, given by the State Government or Central Government, the appellant shall mention the details about the present order as well as the judgment and order of conviction and sentence recorded by the learned trial Judge against him. So without informing any Government or semi-Government department, he shall not obtain any licence or parawana for this period of two years. In the event of breach of any of the aforesaid conditions of the bond to be executed by the appellant, he shall be called to serve the sentence imposed by the learned trial Judge.

6. The appellant herein is directed to execute the said bond within a period of 15 days from today. The bail bond executed by the appellant

stands discharged.

Direct Service is permitted.

(C.K. Buch, J)

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